IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 2461 of 2007(R)

OS.566/1998 of M.C.,WADAKKANCHERRY

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PETITIONER:

JOHNY, S/O. PARANJUKUTTY,
PUTHUR KAZHUNKIL HOUSE, KOTTAPPURAM VILLAGE AND
DESOM, THALAPPILLY TALUK.

BY ADV. SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN

RESPONDENTS:

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1. KURUMBA, W/O. LATE AYYAPPAN,
CHEENIKUNDU HOUSE, KOTTAPPURAM VILLAGE AND
DESOM, THALAPPILLY TALUK.

2. MANIKANDAN, S/O. KURUMBA,
CHEENIKUNDU HOUSE, KOTTAPPURAM VILLAGE AND
DESOM, THALAPPILLY TALUK.

3. PARVATHY, D/O. KURUMBA,
CHEENIKUNDU HOUSE, KOTTAPPURAM VILLAGE AND
DESOM, THALAPPILLY TALUK.

4. RAJANI, D/O. KURUMBA,
CHEENIKUNDU HOUSE, KOTTAPPURAM VILLAGE AND
DESOM, THALAPPILLY TALUK.

5. GIRIJA, D/O. KURUMBA,
CHEENIKUNDU HOUSE, KOTTAPPURAM VILLAGE AND
DESOM, THALAPPILLY TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.2461 OF 2007

DATED THIS THE 22nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is plaintiff and respondent defendant in O.S.566/98 on the file of Munsiff Court, Vadakkancherry. A Commission was appointed in the suit. The Commissioner submitted a report and plan. Petitioner filed I.A.867/01, an application under Order XXVI Rule 10 of Code of Civil Procedure to set aside the report and plan. Under Ext.P5 order, learned Munsiff dismissed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned Counsel appearing for petitioner was heard.

3. Arguments of learned Counsel appearing for petitioner was that the evidence of PW1, Surveyor shows that Commissioner did not measure the property on the basis of the measurements shown in the title deed of petitioner and without measurement, Commissioner submitted the report and learned Munsiff accepted the report and if that be so, no purpose will be served by proceeding with the trial of the suit and without proper identification and the dispute cannot be settled and therefore Ext.P5 order is to be quashed.

4. Ext.P5 is an interlocutory order passed in the suit. Just like another interlocutory order, Munsiff has to dispose the suit untrammeled by the observations made in Ext.P5. Petitioner is entitled to challenge the interlocutory order, along with the final judgment in the suit, if necessary. In exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India, Ext.P5 order cannot be interfered with. Petitioner is entitled to adduce evidence in support of his contentions raised in the objection. If, after taking evidence, learned Munisff finds that it is necessary either to appoint a Commission or to remit the report, Ext.P5 order will not prevent the learned Munsiff from doing so.

Writ petition is disposed.

M.SASIDHARAN NAMBIAR,JUDGE

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